

### **REMARKS/ARGUMENTS**

The Examiner is thanked for the clarity and conciseness of the previous Office Action, and for the citation of references, which have been studied with interest and care.

This Amendment is in response to the Office Action mailed June 17, 2005. In the Office Action, claims 1-3, 6-17, 20-31, 34-45, and 48-55 stand rejected under 35 U.S.C. § 103.

Reconsideration in light of the remarks made herein is respectfully requested.

#### ***Rejection Under 35 U.S.C. § 103***

Claims 1, 6-17, 20-31, 34-45, and 48-55 stand rejected under 35 U.S.C. § 103(a) as being allegedly obvious over U.S. Patent No. 5,701,599 issued to Aihara (hereinafter Aihara) in view of U.S. Patent No. 6,515,964 issued to Cheung et al (hereinafter Cheung).

Applicant respectfully traverses the Office Action's §103 obviousness rejections in their entirety, in light of the following remarks. As stated in MPEP §2141.03:

A prima facie obviousness rejection requires the three basic criteria be met. First, there must be some teaching, suggestion, or motivation, either in the references of themselves, or in the knowledge generally available to one skilled in the art, to modify the reference or to combine the references. Second, there must be some reasonable expectation of success. Finally, the prior art reference, or references when combined, must teach all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the Applicant's disclosure. MPEP §2141.03. (Emphasis added).

MPEP §2141.03 further warns that *impermissible hindsight must be avoided*.

Furthermore, with regards to obviousness, as aptly stated by the Federal Circuit in *In re Kotzab*, 55 U.S.P.Q.2D (BNA) 1313, 1316-1317 (Fed. Cir. 2000):

Most if not all inventions arise from a combination of old elements. Thus every element of a claimed invention may often be found in the prior art. However, *identification in the prior art of each individual part claimed is*

*insufficient to defeat patentability of the whole claimed invention.* Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant. (Emphasis added).

Applicant's independent claims 1, 15, 29, and 43 generally relate to: receiving a *digital television (DTV) broadcast signal that includes a data test stream having a plurality of data packets...and determining a service level of this DTV broadcast signal based upon a loss of data packets from the data test stream wherein determining the service level includes measuring a number of data test packets of the data test stream received over a predetermined interval and determining a data packet loss percentage value for the data test stream by calculating a ratio of the measured number of data packets received and a number of data packets that should have been received...and displaying the service level.*

In contrast, Aihara does not teach or suggest receiving a DTV broadcast signal that includes a data test stream having a plurality of packets or determining a service level of a DTV broadcast signal.

The Office Action cites column 6, lines 49-67 of Aihara for support which states:

The broadcast receiving apparatus 1 receives broadcast waves by means of the antenna 2...The broadcast waves received by the antenna 2 are supplied to the tuner 3...The VIF 4 demodulates and detects the signals input from the tuner 3 to extract analog video signals from the input signals...The microprocessor 5 comprises an A/D converter, a buffer, a decoder, and the like. The microprocessor 5 converts the analog video signals input from the VIF 4 into digital signals by its A/D converter, and stores the digital signals in the buffer. (Emphasis added).

As cited in the next paragraph, in column 7, Aihara states that the error detector 6 detects errors of the input signals and outputs the number of detected errors to the microprocessor 5 in the CPU 11...As the error detector 6, an error detector used in e.g., a teletext-multiplied television receiving apparatus may be used when the broadcast receiving apparatus 1 is a teletext receiving apparatus, the error detector 6 detects error correction information and reception signals, thereby detecting error signals.

Thus, as set forth in Aihara, Aihara teaches receiving an analog television signal and utilizing an error detector to detect error correction information in reception signals (related to teletext) to thereby detect error signals.

There is absolutely no teaching or suggestion in Aihara of receiving a DTV broadcast signal that includes a data test stream having a plurality of data packets. In fact, Aihara has a priority date of July 30, 1990, and as mentioned in Applicant's patent application, in some embodiments, DTV broadcast signals may relate to DTV, ATFC, DVB standards, all of which have promulgation dates greater than 1995.

Quite simply, Aihara does not teach or suggest receiving a DTV broadcast signal. Aihara only teaches receiving a standard analog television broadcast signal that may include teletext data. Further, there is no teaching or suggestion of determining a service level of a DTV broadcast signal based upon a loss of data packets from a data test stream.

Further, there would be no motivation, even if Aihara did teach or suggest these limitations, to combine Aihara, which works well for its intended purpose, to combine it with Cheung in order to in hindsight recreate the embodiments of Applicant's claimed invention.

In contrast to Aihara, Cheung teaches: "A network call admission control system [that] receives a call and determines a call characteristic requirement and a network characteristic parameter...The call is admitted to the network based in part on whether the call characteristic requirement is satisfied by the network characteristic parameter. As a result, a communication service provider can provide a high quality of service for completed calls or charge a discounted rate for completed calls not meeting a certain quality of service." (Cheung, Abstract).

Thus, Cheung relates to a non-analogous field involving regulating call traffic in a packet-switched network based upon delay characteristics of the network. Cheung appears to be particularly related to voice-over IP (VOIP).

Applicant respectfully submits that Cheung is not related to the field of digital television.

As the Office Action on page 3 concedes, Aihara does not teach or suggest determining a data packet loss percentage value for a data test stream by calculating a ratio of a measured number of data packets received by a receiver and a number of data packets that should have been received by the receiver.

Applicant respectfully submits that Chueng is cited in hindsight merely in an attempt to recreate Applicant's claimed invention. Particularly, Applicant respectfully submits that Chueng is not related in any way to digital television (DTV) broadcasting.

The Office Action cites column 4, lines 14-25, as being relevant to obviating Applicant's claimed invention. Column 4, lines 14-25, state:

The state of a packet-switched network can be indicated by a total number of performance parameters, including total delay, mean and standard deviation for such delay, packet loss, error rate, etc. These network characteristic parameters can be determined by methods well known in the art. For example, total delay is the time interval from when one party utters a sound to when the other party hears that sound. It can be determined by methods well known in the art including the time transmission of audible tones. Packet loss is the percentage of packets transmitted but not received and can be measured by sending a known set of packets and determining how many are received. (Emphasis added).

Applicant respectfully submits that Cheung as relied upon by the Office Action does not teach or suggest alone, or in combination with Aihara: determining a service level of a DTV broadcast signal based upon a loss of data packets from a data test stream wherein determining the service level includes measuring a number of data packets of the data test stream received over a pre-determined interval and determining a data packet loss percentage value for the data test stream by calculating a ratio of the measured number of data packets received and a number of data packets that should have been received.

Applicant respectfully submits that neither Aihara or Cheung alone or in combination, teach or suggest the limitations of Applicant's independent claims 1, 15, 29, and 43. Neither of these references relate to the use of DTV broadcast signals to determine a service level based upon the novel and non-obvious techniques set forth in Applicant's independent claims.

Applicant respectfully submits that Applicant's amended independent claims 1, 15, 29, and 43 are not taught or suggested by Aihara alone or in combination with Cheung, and Applicant respectfully requests that these claims be allowed. Further, as to the dependent claims which are dependent from allowable base claims, Applicant respectfully requests that these claims be allowed as well.

***Conclusion***

In view of the remarks made above, it is respectfully submitted that pending claims 1-3, 6-17, 20-31, 34-45, and 48-55 define the subject invention over the prior art of record. Thus, Applicant respectfully submits that all the pending claims are in condition for allowance, and such action is earnestly solicited at the earliest possible date. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application. To the extent necessary, a petition for an extension of time under 37 C.F.R. is hereby made. Please charge any shortage in fees in connection with the filing of this paper, including extension of time fees, to Deposit Account 02-2666 and please credit any excess fees to such account.

Respectfully submitted,

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Dated: 10/13/2005

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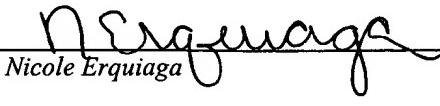
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